

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

TEXAS TRUCK PARTS & TIRES, INC.

(b) County of Residence of First Listed Plaintiff Harris County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Matthew B. Probus, Wauson & Probus
One Sugar Creek Ctr. Blvd., #880
Sugar Land, TX 77478

DEFENDANTS

UNITED STATES OF AMERICA

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FOREIGN/REPEAL	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAXES <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
26 U.S.C. sec. 4071

Brief description of cause:
Tax Refund

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

June 23, 2021

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS,
HOUSTON DIVISION**

**TEXAS TRUCK PARTS & TIRES,
INC.,**

Plaintiff,

VS.

UNITED STATES OF AMERICA,

Defendant.

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CIVIL ACTION NO. _____

PLAINTIFF’S ORIGINAL COMPLAINT FOR REFUND

TO THE HONORABLE U.S. DISTRICT JUDGE OF SAID COURT:

COMES NOW, TEXAS TRUCK PARTS & TIRES, INC. (“Texas Truck” or the “Plaintiff”), and makes this its Plaintiff’s Original Complaint for Refund and would show this Court as follows:

I.

Parties

1. Plaintiff, Texas Truck Parts & Tires, Inc., is a Texas corporation with its principal place of business located in Houston, Harris County, Texas.

2. Defendant, the United States of America, may be served pursuant to Fed. R. Civ. P. 4(i)(1) by: (a) delivering a copy of the summons and complaint to the civil process clerk of the United States Attorney for the Southern District of Texas pursuant to the local COVID emergency procedures by registered or certified mail at “Civil Process Clerk, United States Attorney’s Office, 1000 Louisiana St., Suite 2300, Houston, Texas 77002” and by email at USATXS.CivilNotice@doj.gov; and (b) delivering a copy of the summons and complaint to the

Attorney General of the United States at Washington, D.C., at “Attorney General of the United States, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.”

II.

Jurisdiction and Venue

3. The Court has subject matter jurisdiction over the matter UNDER 28 U.S.C. § 1331, because the action arises under laws of the United States. The Court also has original jurisdiction under 28 U.S.C. § 1346(a)(1), because the United States has erroneously assessed penalties against and wrongfully collected penalties from plaintiff.

4. Venue is proper in this district under 28 U.S.C. § 1402(a)(2), because the Plaintiff’s principal place of business is located in this district.

IV.

Background Facts

5. The United States of America, through its agency the Internal Revenue Service (hereinafter referred to as the “IRS”) determined Texas Truck failed to file Forms 720 and pay federal excise tax as required by 26 U.S.C. § 4071 as the importer of taxable tires. The IRS determined Texas Truck was the importer of certain taxable tires from 2012 through 2017. The IRS determined Texas Truck should have filed Forms 720 Quarterly Federal Excise Tax Returns, and made assessments in the following amounts.

Period Ending	Assessment
3/31/2012	6,649.00
6/30/2012	26,952.00
9/30/2012	65,122.00
12/31/2012	56,524.00
3/31/2013	35,260.00
6/30/2013	35,428.00
9/30/2013	66,869.00
12/31/2013	96,706.00
3/31/2014	32,330.00
6/30/2014	48,993.00
9/30/2014	65,216.00
12/31/2014	80,285.00
6/30/2015	57,710.00
9/30/2015	79,236.00
12/31/2015	76,112.00
3/31/2016	166,173.00
6/30/2016	167,397.00
12/31/2016	261,818.00
6/30/2017	141,203.00
9/30/2017	291,008.00
12/31/2017	75,652.00
Total:	1,932,643.00

6. Texas Truck paid \$100 towards the liability for each of the twenty-one periods on or about June 30, 2020.

7. Texas Truck filed a Form 843 Claim for Refund and Request for Abatement seeking a refund of \$100 per period. The claim was mailed on November 20, 2020 and received by the IRS on November 23, 2020.

8. To date, the IRS has not issued a notice of disallowance. More than six months have elapsed since the filing of the refund claim.

9. Texas Truck was not the importer of the tires at issue.

10. The IRS based its case on records from the United States Customs Service Form 7501. Texas Truck was not the importer of record on any of the Forms 7501.

11. The United States Customs Service refused to provide Texas Truck with information related to the shipments because it was not the importer of records for the tires at issue.

12. The Customs Forms 7501 list the manufacturers of the tires as the importers.

13. The consignee listed on the Customs Forms 7501 for 2012 through the 3rd Quarter of 2015 was not Texas Truck.

14. A separate entity purchased many of the tires at issue.

15. For tires purchased by Texas Truck, the company paid one all-inclusive price, which included shipping, duties and taxes, for the tires to be delivered to its place of business.

16. Texas Truck did not arrange for any functions typically associated with an importer, such as arranging for the tires to clear customs. These actions were arranged by the manufacturers.

17. Texas Truck did not bring the tires at issue into the United States. Texas Truck did not withdraw the tires from a customs bonded warehouse for sale or use in the United States. Texas Truck did not hire a customs broker. Texas Truck did not arrange for a nominal importer.

18. The manufacturer of the tires collected the federal excise tax in some instances. In many instances, Texas Truck ordered tires from companies with a United States presence, and mailed checks for the tires to United States addresses. Specifically, the tires from Omni United listed on the Customs forms were paid for by mailing a check to a US address. One manufacturer claimed it was the importer and that “All our other customers pay us the FET and we pay to the U.S. government.”

V.

Causes of Action

19. The Plaintiff has performed all conditions precedent, if any.

20. The IRS wrongfully assessed excise taxes against Texas Truck pursuant to 26 U.S.C. § 4071 for the transactions involving the purchase of tires. Texas Truck is entitled to a refund of the \$100 per period paid to the United States, because it was not the importer of the tires at issue.

21. The Plaintiff was forced to hire counsel to defend the wrongfully assessed excise taxes in administrative proceedings within the IRS and now in prosecuting its refund claim. The Plaintiff has exhausted all administrative remedies available to it with the IRS. The Plaintiff is entitled to an award of its reasonable administrative costs incurred in connection with the administrative proceeding within the IRS pursuant to 26 U.S.C. § 7430(a)(1) and its reasonable litigation costs incurred in connection with this Court proceeding pursuant to 26 U.S.C. § 7430(a)(2)

VI.

Jury Demand

22. Plaintiff asserts its rights under the Seventh Amendment to the U.S. Constitution and demands, in accordance with Fed. R. Civ. P. 38, a trial by jury on all issues.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Texas Truck Parts & Tires, Inc. prats that after trial by jury on all issues, this Court enter judgment in favor of the Plaintiff over and against the United States of America for:

- a. a refund of the amounts paid by Plaintiff for excise taxes for the periods listed above;
- b. a determine that Plaintiff was not the importer of the tires at issue;
- c. an award of damages, if any;
- d. reasonable litigation costs as defined by 26 U.S.C. § 7430(c)(1);
- e. costs of court; and
- f. any other relief to which the Plaintiff is entitled.

Respectfully submitted,

WAUSON | PROBUS

By: /s/ Matthew B. Probus
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